

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Digital TV of Orlando, LLC)	Facility I.D. No. 10521
Licensee of Station WHDO-CA)	NAL/Acct. 201441420035
Orlando, Florida)	FRN: 0016748303

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: October 1, 2014

Released: October 1, 2014

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”)¹ we find that Digital TV of Orlando, LLC (the “Licensee”), licensee of television station WHDO-CA (the “Station”), apparently willfully and/or repeatedly violated the Commission’s Rules by: (1) failing to file timely the Station’s issues/programs lists, in violation of Section 73.3526(e)(11)(i);² (2) failing to file timely the Station’s Children’s Television Programming Reports, in violation of Section 73.3526 (e)(11)(iii);³ and (3) discontinuing service for a period of greater than 30 days without authority from the Commission, in violation of Section 73.1740(a)(4).⁴ Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of Twenty Thousand Dollars (\$20,000).

II. BACKGROUND

2. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.⁵ As set forth in subsection 73.3526(e)(11)(i), each commercial television licensee must prepare and place in its public inspection file a TV issues/programs list which details programs that have provided the station’s most significant treatment of community issues during the preceding three month period. As set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children’s Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. That subsection also requires licensees to file the reports with the Commission and to publicize the existence and location of the reports.

¹ This NAL is issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”). See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80. The Chief, Video Division, Media Bureau, has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

² 47 C.F.R. § 73.3526(e)(11)(i).

³ 47 C.F.R. § 73.3526(e)(11)(iii).

⁴ 47 C.F.R. § 73.1740(a)(4).

⁵ 47 C.F.R. § 73.3526.

3. Section 73.1740(a)(4) of the Rules requires a Station to receive authority from the Commission for any discontinuance of service longer than 30 days.⁶

4. The Station went silent beginning on September 17, 2010 and purportedly resumed operations on September 13, 2011. The Station once again went silent beginning on September 21, 2011 and purportedly resumed operations on September 21, 2012. During this two year period, the Station was on the air for approximately one week.

5. On March 23, 2011, the Video Division sent the Licensee a letter of inquiry regarding its failure to file Children's Television Programming Reports during the third and fourth quarters of 2007 and all four quarters of 2008 through 2010. In an April 18, 2011, the Licensee admitted its failure to file the reports timely. A review of the Licensee's online public file further shows that the Licensee failed to file issues/programs lists for the third and fourth quarters of 2007.

III. DISCUSSION

6. The Licensee's failure to file electronically the Station's quarterly TV issues/programs lists for two quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(i). Moreover, the Licensee's failure to file with the Commission in a timely manner its Children's Television Programming Reports for 14 quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii). The Licensee's discontinuance of service without authority between 2010 and 2012 constitutes an apparent willful and/or repeated violation of Section 73.1740(a).

7. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person determined by the Commission to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁷ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁸ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."¹¹

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or provide required information and \$5,000 for an unauthorized discontinuance of service.¹² In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity

⁶ 47 C.F.R. § 73.1740(a).

⁷ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

⁸ 47 U.S.C. § 312(f)(1).

⁹ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁰ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹¹ 47 U.S.C. § 312(f)(2).

¹² *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹³

9. In this case, the Licensee has not filed the quarterly issues/programs lists for the Station for two quarters, and we conclude that the Licensee is apparently liable for a \$3,000 forfeiture for this public file violation. The Licensee further failed to file its Children’s Television Programming Reports in a timely manner for 14 quarters, and we therefore conclude that the Licensee is apparently liable for a \$7,000 forfeiture for this apparent violation. The Licensee also discontinued service without authorization for two years, and we conclude a \$10,000 forfeiture is appropriate for this apparent violation. Based on the record before us, we therefore conclude that a total forfeiture in the amount of \$20,000 for the Station is appropriate for the Licensee’s apparent willful and/or repeated violations of Sections 73.3526(e)(11)(i) & (iii) and Section 73.1740(a).

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that Digital TV or Orlando, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Twenty Thousand Dollars (\$20,000) for its apparent willful and/or repeated violations of Sections 73.3526 and 73.1740 of the Commission’s Rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that Digital TV of Orlando, LLC, within thirty (30) days of the release date of this NAL, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. Nos. and FRN Nos. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account numbers in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Peter.Saharko@fcc.gov.

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Evan Morris, Attorney Advisor, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. Nos. referenced above. If possible, an electronic copy should also be sent via email to evan.morris@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

¹³ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4) and note to paragraph (b)(4), Section II.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁴

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Digital TV of Orlando, LLC, c/o Larry Hyman, Court-Appointed Receiver, 106 S. Tampianna Avenue, Suite 200, Tampa, Florida, 33609, and to counsel, Dan J. Alpert, Law Office of Dan J. Alpert, 2120 N. 21st Road, Arlington, Virginia, 22201.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁴ See 47 C.F.R. § 1.1914.